

Department of Energy

§ 217.40

as provided in § 217.33 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to require preferential treatment for the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 217.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than \$50,000, or one-half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR) (see FAR section 2.101) or in other authorized acquisition regulatory or management systems) whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§ 217.38 Limitations on placing rated orders.

(a) General limitations.

(1) A person may not place a DO- or DX-rated order unless entitled to do so under this part.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item or services than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items or services in advance of the receipt of a rated order, except as specifically authorized by the Department of Energy (see § 217.41(c) for information on obtaining authorization for a priority rating in advance of a rated order);

(iv) Items that are not needed to fill a rated order, except as specifically authorized by the Department of Energy, or as otherwise permitted by this part; or

(v) Any of the following items unless specific priority rating authority has been obtained from the Department of Energy, a Delegate Agency, or the Department of Commerce, as appropriate:

(A) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see § 217.21.]

(vi) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(b) Jurisdictional limitations.

(1) Unless authorized by the resource agency with jurisdiction, the provisions of this part are not applicable to the following resources:

(i) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Resource agency with jurisdiction—Department of Agriculture);

(ii) Health resources (Resource agency with jurisdiction—Department of Health and Human Services);

(iii) All forms of civil transportation (Resource agency with jurisdiction—Department of Transportation);

(iv) Water resources (Resource agency with jurisdiction—Department of Defense/U.S. Army Corps of Engineers); and

(v) Communications services (Resource agency with jurisdiction—National Communications System under E. O. 12472 of April 3, 1984).

Subpart D—Special Priorities Assistance

§ 217.40 General provisions.

(a) The EPAS is designed to be largely self-executing. However, from time-

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to-time production or delivery problems will arise. In this event, a person should immediately contact the Office of Infrastructure Security and Energy Restoration, for guidance or assistance (Contact the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in §217.93). If the problem(s) cannot otherwise be resolved, special priorities assistance should be sought from the Department of Energy through the Office of Infrastructure Security and Energy Restoration (Contact the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in §217.93). If the Department of Energy is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Department of Energy may forward the request to another agency with resource jurisdiction, as appropriate, for action. Special priorities assistance is provided to alleviate problems that do arise.

(b) Special priorities assistance is available for any reason consistent with this part. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form DOE F 544 (05-11) (OMB control number 1910-5159) to the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in §217.93. Form DOE F 544 (05-11) may be obtained from the Department of Energy or a Delegate Agency. A sample Form DOE F 544 (05-11) is attached at appendix I to this part.

§217.41 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items or services not normally rated under this part, the person may request the authority to use a priority

rating in ordering the needed items or services.

(b) Rating authority for production or construction equipment.

(1) A request for priority rating authority for production or construction equipment must be submitted to the U.S. Department of Commerce on Form BIS-999.

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) Rating authority in advance of a rated prime contract. (1) In certain cases and upon specific request, the Department of Energy, in order to promote the national defense, may authorize or request the Department of Commerce to authorize, as appropriate, a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the Department of Energy or the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from the Department of Energy and our use of that priority rating with our suppliers in no way commits the Department of Energy, the Department of Commerce, or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.